A

DATO' ZAHARI SULAIMAN

v.

GENNEVA SDN BHD

B

HIGH COURT MALAYA, KUALA LUMPUR
MOHAMAD ARIFF YUSOF J
[CIVIL SUIT NO: D-22 NCC-619-2010]
29 JUNE 2010

C ***CIVIL PROCEDURE:*** *Summary judgment - Application for - Claim for amount outstanding under contract of sale - "Seizure orders" under s. 50(1) Anti-Money Laundering and Anti-Terrorism Financing Act 2001 - Whether s. 54(3) presents an absolute bar to commencement of any civil action, suit or other proceedings whether it relates directly or indirectly to*
D *property seized under Act - Interpretation of said provision - Striking out - Interpretation Acts 1948 and 1967, s. 17A - Rules of the High Court 1980, O. 18 r. 19(1)(b), (d) - Anti-Money Laundering and Anti-Terrorism Financing Act 2001, ss. 50(1), 54(3)*

E ***STATUTORY INTERPRETATION:*** *Construction of statutes - Rules of construction - Whether s. 54(3) Anti-Money Laundering and Anti-Terrorism Financing Act 2001 presents an absolute bar to commencement of any civil action, suit or other proceedings whether it relates directly or indirectly to property seized under Act - Fundamental right of a citizen*
F *to resort to court process and access to justice - Interpretation Acts 1948 and 1967, s. 17A*

The plaintiff sold a used gold coin to the defendant for a total sum of RM647,400, to be paid by way of installments. Since the defendant only paid RM23,400, the plaintiff sued for the remaining
G sum of RM624,000. The defendant informed the plaintiff that it had been served with "seizure orders" under s. 50(1) of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 ('Act'), by which the defendant's monies in its several banking accounts were seized. The plaintiff then applied for summary judgment to
H be entered against the defendant for the amount outstanding (encl. 3), while the defendant filed an application to strike out the writ and statement of claim under O. 18 r. 19(1)(b) and (d) of the Rules of the High Court 1980 (encl. 8). The defendant argued that s. 54(3) of the Act presents an absolute bar to the
I commencement of any civil action, suit or other proceedings

whether it relates directly or indirectly to the property seized under the Act, and since the monies were property, the plaintiff could not maintain or continue the present suit.

Held (allowing encl. 3 with costs; dismissing encl. 8 with costs):

(1) Section 54 of the Act is headed "Dealing with property after seizure to be void". It is obvious from this heading and the contents of this section that the reference to an action, suit or proceeding of a civil nature has to be related to the property seized, which in this instance consisted of the numerous banking accounts. Section 54(3) of the Act cannot be read the way the defendant wanted it to be read, for to do so will interfere with the general fundamental right of a citizen to resort to court process and access to justice for the determination of his dispute. Section 54(3) of the Act, as presently worded, cannot be reasonably interpreted as imposing a general restraining order on all suits, actions or proceedings as against all litigants or potential litigants, irrespective of the properties seized. To read this provision as imposing a kind of restraining order on the legal process generally will contravene s. 17A of the Interpretation Acts 1948 and 1967. (para 7)

Case(s) referred to:

Kekatong Sdn Bhd v. Danaharta Urus Sdn Bhd [2003] 3 CLJ 378 CA ***(refd)***

Legislation referred to:

Anti-Money Laundering and Anti-Terrorism Financing Act 2001, ss. 50(1), 54(3)

Interpretation Acts 1948 and 1967, s. 17A

For the plaintiff - Jakariya Abdul Jalil; M/s Jakariya & Co

For the defendant - Wilson Lim (Alex Tan with him); M/s Wong Kian Kheong

Reported by Suresh Nathan

JUDGMENT

Mohamad Ariff Yusof J:

[1] The facts of this case concerns the sale of a used gold coin by the plaintiff to the defendant under what is described as a "deferred payment purchase bill" dated 9 June 2009. By this arrangement the defendant promises to pay the purchase price of RM520,000 by instalments, with full settlement to take effect on or by 8 December 2009. By this arrangement, the sum required to be paid by the defendant becomes RM647,400 which is derived by the following payment scheme:

> 1st Instalment: RM10,400
>
> Further Instalments: RM23,400.00 x 5 months = RM117,000
>
> Remainder sum of RM520,000 to be settled before or at date of full settlement.
>
> Total amount payable: RM647,400

[2] Out of the total sum stated above, the defendant has paid only RM23,400. The plaintiff is presently suing for the remaining sum of RM624,000. Following the receipt of a letter of demand sent by the plaintiff's solicitors, the defendant replied by informing the plaintiff that the company had been served with "seizure orders" under s. 50(1) of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 ("AMLATFA"), by which the company's monies in its several banking accounts were seized. This letter to the plaintiff's solicitors ends by saying since the investigation by Bank Negara Malaysia against the defendant was still on-going the company was advised by its solicitors not to issue any comment or statement. Nevertheless, the defendant then states:

> Our Company wishes to thank your client for his/her kind understanding and patience during these trying times and our Company reiterates that our Company will honour all its obligations once the Seizure Orders are revoked.

[3] The plaintiff now applies for summary judgment to be entered against the defendant for the amount outstanding, ie, for RM624,400 with interest thereon at 8% per annum from 20 December 2009 until full settlement. The defendant, for its

part, and despite the reiteration to "honour all its obligations", files an application to strike out the writ and statement of claim under O. 18, r. 19(1)(b) and (d), namely on the grounds of the suit being "scandalous, frivolous and vexatious" or "otherwise an abuse of the process of the court." To support its striking out application the defendant advanced an argument based on s. 54(3) of the Act. Proceeding from this basis, the defendant argues that this provision presents an absolute bar to the commencement of any civil action, suit or other proceedings whether it relates directly or indirectly to the property which have been seized under the Act. According to this argument, since the provision refers to "in respect of the property which has been so seized", and monies are property, the plaintiff cannot maintain or continue this present suit. It is argued that the words "in respect of" and "being connected with", as they appear in the provision, are words of wide import and should not be restrictively read. In defendant's counsel's own words, the defendant "respectfully submits that by virtue of the proper meaning attributed to the words "in respect of the property" seized under AMLATFA, so long as a civil action, suit or other proceedings relate directly or indirectly to the property cease under AMLATFA, the court has no jurisdiction to entertain such action, suit or the proceedings under s. 54(3) AMLATFA ..."

[4] In my view, it will be useful to set this argument in context. In the first place, it is necessary to determine what are the properties that have been seized under the Act. Secondly, and as a matter of statutory interpretation, a determination will then be required as to whether the plaintiff is absolutely barred from continuing with the suit in light of these properties seized. The list of property seized can be seen in exh. "A – 2(a), (b), (c) and (d) to the defendant's first affidavit filed in answer to the plaintiff's application for summary judgment. These properties are:

(a) Maybank Account Numbers 514 4 4011 3854 and 514 4 9512 1934.

(b) Public Bank Current Account Number 3142 30312 6; Fixed Deposit Number 12008104 1 7; Safe Deposit Number SDB 6 3 4 1.

(c) CIM Bank Account Numbers 1460000877058, 14680000707059 and 1460001149052.

(d) HSBC account number 3532 529 27101.

[5] I believe it is relevant to appreciate the intention behind the several Seizure Orders in regard to these properties. Such being the case, it will be useful to see how the orders have been worded, and I quote:

> Whereas I, Rahimah binti Abd Majid, Deputy Public Prosecutor being satisfied on the information given to me by ..., Investigating Officer that the movable property including any monetary instrument or any accretion to it, as set out below:
>
> ...
>
> is the subject matter of an offence under subsection 4(1) of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (the Act) or evidence in relation to the commission of such offence.
>
> Now pursuant to subsection 50(1) of the Act, it is hereby ordered that you, your employee your agent not to part with, deal in, or otherwise dispose of such property or any part of it until this order is otherwise revoked or varied.
>
> Take notice that failure to comply with this order is an offence under this Act.

[6] These orders are addressed to the respective banks.

[7] Section 54, it is to be observed, is headed "Dealing with property after seizure to be void." It is obvious from this heading, and from the contents of the section, that the reference to action, suit or proceeding of a civil nature has to be related to the property seized, in our case the numerous banking accounts of the various banks seized. Section 54(3) cannot be read the way the defendant wants it to be read, for to do so will interfere with the general fundamental right of a citizen to resort to court process and access to justice for the determination of his dispute. See eg, *Kekatong Sdn Bhd v. Danaharta Urus Sdn Bhd* [2003] 3 CLJ 378 (Court of Appeal) for an express recognition of access to justice as a fundamental right. Such an outcome cannot be made dependent merely as an incidental interpretation of this statutory provision. If it is to be excluded, it will require clearer words than those appearing in s. 54(3). Such a reading of the statutory provision will be in keeping with the common law principle of statutory interpretation that requires courts to interpret statutes so as not to interfere with vested rights, unless the statute clearly

states so. It will also be in line with s. 17A of our Interpretation Act which requires courts to adopt a purposive interpretation and adopt an interpretation that will promote the purposes and objects of the statute rather than the reverse. Therefore, with all respect due, the defendant's argument is untenable. Section 54(3), as presently worded, cannot be reasonably interpreted as imposing a general restraining order on all suits, actions or proceedings as against all litigants or potential litigants, and irrespective of the properties seized. To read this provision as imposing a kind of restraining order on legal process generally will, in my view, fall foul of s. 17A of the Interpretation Act.

[8] Enclosure 8 (striking out application) is therefore dismissed with costs of RM3,000 to be paid by the defendant to the plaintiff within one month from the date of this order.

[9] Enclosure 3 (summary judgment application) allowed in terms of prayer (1) with costs RM3,000 to be paid by the defendant to the plaintiff within one month from the date of this order.